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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,804	12/03/2001	Peter Van Voris	47309-00031USP1	9427

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 01/05/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 1/1

This is a communication from the examiner in charge of your application.
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OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 10/10/03 - 8/29/03
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-62, 64-76 is/are pending in the application.
- Of the above, claim(s) 19, 43, 53 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-40, 20-37, 39-41, 43-62, 54-62, 64-76 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claims 1-63, 64-76 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 11
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 19, 42, 53 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

Claims 54-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims depend on a withdrawn claim thus are indefinite.

Claims ~~1-3~~ 4-7, 15, 16, 54, 57, 58-62, 68, 74-76 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al AU 13886/95.

The rejection of record is maintained. Plastic films, the instant layer, overlap, and are impregnated with insecticide, this constituting the polymeric matrices of the instant invention as claimed (P. 6, line 15-22, P.8, line 18-32). The polymers are polyethylene of 50-300 microns. Release is at a very low rate (P. 10, line 25-line 5, P. 11); O contamination attained. Added embodiments are at claim 11. The plastic granule adjacent the protective barrier. Since only minute amounts are released, the barrier retaining and releasing layers are the same the pesticide/layer are co-extruded (P. 8, bottom).

Claims 1-18, 20-37, 39-41, 43-52, 54-62, 64-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Kohorn et al 4639393 in view of Zimmerman

5139566 or Iwakawa et al 5902597, Saifah et al 4747902 and Kodamar et al WO 95/32902.

The rejection of record is maintained.

Vonkohorn is representative of multi-layered barriers, while santoh is of matrices of these polymeric layers, impregnated with pesticides. The prior art is cognizant of the utilization of multi layered polymeric products, providing thereby multi functional advantages; protective outer layers, reservoir inner layers, adhesively, rate controlling as examples. The combination of these elements, components and functions, given the prior art of record, is within the pure view of one of ordinary skill in the pesticidal barrier arts, and obvious given these references. Further, applicant has not shown any criticality, unexpected, or unobvious advantage to the use of 3, 6, 7, or 8 layered barriers, over that of evidence in the prior art. The prior art is well aware of the use of insecticides, fungicides and adjuvants for the functionality for which they are known to be used is not a basis for patentability. The selection of active is a result effective parameter determinable by artisan as desired for purposes of treating specific pests.

All the critical elements of the instant invention are disclosed.

Claims 1, 3-5, 7, 9-14, 16, 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Crook et al 6224957.

Multilayer barriers of the instant, claimed compositions are provided. Co-extruded polymers (col. 2, lines 46-57).

The pesticide is biocide, Dichlorophene (col. 3, line 64, col. 2, 30-34),
Substantially prevented from release from the barrier (col. 3, top), which comprises

Art Unit: 1616

layers of low and high-density polymer; polyethylene (col. 2, last paragraph). Added layers with in the outer and inner layer, are contemplated (col. 4, bottom, 5, top). The pesticide layer is LDPE (col. 2, lines 65-48). The VCI constitutes the instant carrier (col. 2, bottom 1, col. 5 top).

Claims 12, 16, 57-62, 65, 68, 71, 74-76 are rejected under 35 U.S.C. 102(b) and e) as being anticipated by Gale – WO/ 0037058.

This US filed PCT discloses multi layer (multilaminate) films containing the pesticide nicotine, in a pesticide in a matrix-releasing layer, parallel to a pesticide-retaining layer, such that substantially no pesticide is released from the barrier less than 0.5 mg/cm²/hr (page 4). The ~~pesticide~~ pesticide-retaining layer is saranex. Rate controlling and adhesive layers, including a pesticide (release liner – (lines 24, col. 5) retaining layer in addition to the external retaining layer – thus, retaining layers on opposite sides of the releasing layer, as in instant claim 57. Releasing layers are made from polymeric materials, are 2-4 mils thick (p.4, top). Polymers useful are known in the art (col. 5, line 26+) and rate-controlling membranes are also utilized (p. 6, lines 9-10).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Art Unit: 1616

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR
December 29, 2003



NEIL S. LEVY
PRIMARY EXAMINER